SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 734

LEWIS REYNOLDS, PETITIONER,

vs.

THE UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

INDEX

	Original	Print
Record from Court of Claims	1	1
Petition	1	1
General traverse	8	5
Argument and submission of case	8	5
Special findings of fact	9	5
Conclusion of law	11	8
Opinion of the court, Green, J.	11	9
Judgment	15	13
Proceedings had in case	15	14
Clerk's certificate (omitted in printing)	16	
Order allowing certiorari	17	15

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 6, 1934.

[fol. 1]

IN COURT OF CLAIMS OF THE UNITED STATES

No. M-408

LEWIS REYNOLDS, Claimant,

v.

THE UNITED STATES OF AMERICA, Defendant

1. PETITION—Filed November 13, 1931.

The Honorable the Chief Justice and the Associate Justices of the Court of Claims of the United States:

The claimant respectfully represents:

1. The claimant, Lewis Reynolds, is a citizen of the United States and a resident of the District of Columbia.

2. On or about November 30, 1897, claimant enlisted in the regular United States Army, and served therein in the 25th Infantry thereof until 1901 when he was honorably discharged, during which time claimant served in the Spanish American War; claimant thereupon again enlisted in the [fol. 2] United States Army and served therein in Troop C, 9th Regiment, U. S. Cavalry, until 1904 when he was again honorably discharged, during which time claimant served in the Philippine insurrection; and thereupon claimant again enlisted in the United States Army and served in the Infantry thereof and was honorably discharged therefrom in 1907.

3. In 1911 claimant was suffering from a neuropsychiatric ailment and was adjudged to be of unsound mind by the Supreme Court of the District of Columbia on June 6, 1911, and was thereupon committed to St. Elizabeth's Hospital in the District of Columbia.

4. On or about April 21, 1930, claimant regained his sanity, recovered from said ailment and was thereupon discharged from said Hospital.

5. On May 2, 1922, pursuant to an Act of Congress, approved June 5, 1920, the Bureau of Pensions issued to

claimant its Certificate No. 1202727, setting forth that he was a private, Troop C, 9th Regiment U. S. Cavalry, and was entitled to pension at the rate of $30.00 per month to commence from August 8, 1921; thereafter under date of June 4, 1926, said Bureau of Pensions issued to claimant a schedule of increased pensions pursuant to provisions of the Act of Congress of May 1, 1926, reciting that the former pension of $30.00 per month was increased to $50.00 per month to commence from June 4, 1926.

6. On August 13, 1931, the said United States Veterans' Bureau issued a certificate of recognition as a veteran pursuant to Sec. 202 (10) World War Veterans' Act, 1924, [fol. 3] as amended, in which certificate said Bureau certified that claimant is recognized as a veteran of the Spanish-American War within the meaning of Sec. 202 (10) of said World War Veterans' Act as amended, and that he is entitled to receive hospital treatment and necessary traveling expenses incident thereto.

7. That at the time of claimant's recovery and discharge from St. Elizabeth's Hospital as aforesaid claimant had become entitled to the payment to him by the United States of a large sum of money as a pension, namely, $4,036.00, under the certificate and schedules aforesaid and under the Acts of Congress referred to in paragraph 5 hereof, which said sum of money had been paid to said Hospital by the Bureau of Pensions on behalf of claimant; but notwithstanding claimant being entitled to said sum of money upon his recovery and discharge as aforesaid, said Hospital deducted therefrom and retained the sum of $776.83 as having been advanced by it to claimant for clothing and cash, and the further sum of $3,259.17 on account of board from May 17, 1922, to February 6, 1930.

8. Section 202 (10) of the World War Veterans' Act of 1924, as amended (Title 38, U. S. Code, Section 484), provides that all hospital facilities under the control and jurisdiction of the Veterans' Bureau shall be available to every honorably discharged veteran of the Spanish-American War or the Philippine insurrection suffering from, among other things, a neuropsychiatric ailment or disease, regardless of whether such ailment is due to military service or otherwise, and that the pension of such veteran entitled to hospitalization under said Act shall not be subject to deduc-

tion while such veteran is hospitalized in any Government [fol. 4] hospital for board, maintenance or any other purpose incident to hospitalization, and that prior acts inconsistent with such provisions be, and the same are modified accordingly, specifically mentioning the Act of February 2, 1909, as being modified insofar as it is inconsistent with the provisions of said World War Veterans' Act.

9. That claimant was enfitled to hospitalization under the Act last aforesaid, and said pension was therefore not subject to the deduction made by said St. Elizabeth's Hospital of $3,259.17 on account of board while claimant was hospitalized in said St. Elizabeth's Hospital, which said Hospital is a Government hospital and also a hospital whose facilities are utilized by the Veterans' Bureau under Sec. 10 of said World War Veterans' Act (Sec. 434, Title 38, U. S. C.) as amended.

10. That claimant protested against the refusal by said St. Elizabeth's Hospital to pay him the aforesaid pension with deduction for board, and against the retention by said St. Elizabeth's Hospital of the sum aforesaid for board, but said St. Elizabeth's Hospital nevertheless deducted and retained the aforesaid sum of $3,259.17 on account of board of claimant on the ground that said deduction for board was authorized and permitted pursuant to the Act of February 2, 1909; notwithstanding the provision of Sec. 202 (10) of said World War Veterans' Act of 1924, as amended, supra, expressly providing that prior acts inconsistent with such provisions are modified accordingly, and specifically mentioned therein the Act of February 2, 1909; and claimant thereupon appealed to the Secretary of the Interior, and the Secretary of the Interior sustained the action of [fol. 5] St. Elizabeth's Hospital on the basis of an opinion of the Comptroller General of the United States under date of August 18, 1926, and found in 6 Comp. Gen. 126, wherein the said Comptroller General ruled that veterans who have not been taken over by the Veterans' Bureau and who are not being hospitalized in said St. Elizabeth's Hospital accordingly, are not exempt from reimbursing the Hospital for board.

11. Claimant thereupon filed his petition with the United States Veterans' Bureau seeking a retroactive order for

hospitalization in which petition the aforegoing facts were set out, and thereafter, on September 16, 1930, the Acting Director of said United States Veterans' Bureau held in effect that, assuming the facts as set out to be true, the claimant would have been entitled to hospitalization by the Bureau had he or someone acting for him made application therefor; that as no application was filed the Bureau had no opportunity of determining the question of the claimant's right to hospitalization; that as claimant has now been discharged from St. Elizabeth's Hospital the question is moot; and that there is no authority for the Director of the Veterans' Bureau to issue a retroactive order entitling hospitalization in such case.

12. That during the time of claimant's commitment to said St. Elizabeth's Hospital and until his discharge from said Hospital and recovery of his sanity, claimant was unable to make any claim or take any action with reference to said pension, or the right to receive the same without deduction, but promptly and within a reasonable time after his recovery of his sanity and discharge from said Hospital claimant has made repeated efforts through the appropriate [fol. 6] executive departments to recover said money, all as aforesaid.

13. Claimant therefore avers that there is justly due and owing to him from the United States on account of the matters hereinbefore set forth the sum of $3,259.17 after deducting all just set-offs and demands on the part of the United States; that he is the sole owner of the claim herein sued upon and that no assignment or transfer of the claim or any part thereof or any interest therein has been made.

14. No action upon this claim, other than herein set forth, has been taken before the Congress or any of the departments of the Government. Claimant has at all times borne true allegiance to the Government of the United States and has not in any way aided, abetted or given encouragement to its enemies, or aided in rebellion against the Government; claimant is the sole owner of the claim set forth herein and has not assigned the same, or any part thereof.

Wherefore, claimant prays judgment against the United States for $3,259.17 with interest thereon as provided by

law, and for such other and further relief as to this Court may seem proper.

Hill, Ross & Hill, by (Sgd.) Francis W. Hill, Jr., Transportation Building, and David A. Pine, Union Trust Building, Attorneys for Claimant.

[fol. 7] *Duly sworn to by Lewis Reynolds. Jurat omitted in printing.*

[fol. 8] II. General Traverse—Filed December 23, 1931

And now comes the Attorney General, on behalf of the United States, and answering the petition of the plaintiff herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

Charles B. Rugg, Assistant Attorney General.

III. Argument and Submission of Case

On October 11, 1933, this case was argued and submitted on merits by Mr. Francis W. Hill, Jr., and Mr. David A. Pine, for plaintiff, and by Mr. Louis R. Mehlinger, for defendant.

[fol. 9] IV. **Special Findings of Fact, Conclusion of Law and Opinion of the Court by Green, J.**—Filed November 6, 1933

Messrs. Francis W. Hill, Jr., and David A. Pine for plaintiff. Hill, Ross & Hill were on the brief.

Mr. Louis R. Mehlinger, with whom was Mr. Assistant Attorney General Frank J. Wideman, for defendant.

This case having been heard by the Court of Claims, the court, upon the evidence adduced, makes the following

Special Findings of Fact

1. Plaintiff is a citizen of the United States and a resident of the District of Columbia.

2. He first enlisted in the United States Army on November 30, 1897, at Washington Barracks, D. C., and was assigned to Company H, Twenty-fifth Infantry, and was

honorably discharged as a private on November 29, 1900, at Iba, Luzon, Philippine Islands, by reason of expiration of term of service. During this enlistment he served in the Spanish-American War. He reenlisted on January 17, 1901, at Washington Barracks, D. C., and was assigned to Troop C, Ninth United States Cavalry, and was honorably discharged as a private on January 16, 1904, by reason of expiration of term of service. During this enlistment he served in the Philippine insurrection. He reenlisted on January 26, 1904, at St. Louis, Missouri, and was assigned to Company A, Twenty-fifth United States Infantry, and was honorably discharged as a private on January 25, 1907, at Fort Reno, Oklahoma, by reason of expiration of term of service.

3. On May 9, 1911, plaintiff was held in the District of Columbia on a charge of assault and was thereafter indicted for assault with a dangerous weapon. On May 22, 1911, a petition for inquiry as to his sanity was filed. On May 24, 1911, an inquisition in lunacy was ordered, and on June 6, 1911, a jury was sworn and returned a verdict of unsound mind. On June 10, 1911, the Supreme Court of the District of Columbia certified to the Secretary of the Interior that on June 6, 1911, in the case of Lewis Reynolds, No. 27574, he was found by a jury impaneled according to law to be of unsound mind. Thereafter, the Secretary of the Interior, pursuant to provisions of section 927 of the Code of Laws for the District of Columbia, as amended [fol. 10] by the act of April 14, 1906 (34 Stat. 113), ordered that plaintiff be confined in the Government Hospital for the Insane (now St. Elizabeths Hospital), and that if he be not indigent his estate be charged with the expense of his support in said institution. Pursuant to said authorization and upon order of the Secretary of the Interior he was admitted to St. Elizabeths Hospital on June 19, 1911.

4. On April 21, 1922, plaintiff's claim for a pension was approved, effective August 8, 1921, in the amount of $30 a month, and pension certificate No. 1202727 was issued to him. On June 4, 1926, said pension was increased to $50 a month, and on June 25, 1930, to $60 a month. Payment of the pension at the rate of $30 a month from August 8, 1921, and $50 a month from June 4, 1926, through April 3, 1930, was made to the Superintendent of St. Elizabeths

Hospital pursuant to the Department's interpretation of the act of February 2, 1909 (title 24, section 165, U. S. C.).

5. Plaintiff remained in St, Elizabeths Hospital until April 25, 1930, when he was discharged in the custody of his brother, Elijah Reynolds, 445 P Street, northwest, Washington, D. C., who was fully acquainted with his mental condition and agreed with the Superintendent to maintain, provide, and care for him, and expressly stated that he had the means wherewith to do so, and assumed all responsibility for his acts and welfare. During all of said time of confinement plaintiff was suffering from a neuropsychiatric ailment and was of unsound mind.

6. At the time of plaintiff's discharge from St. Elizabeths Hospital there had been credited on the books of said institution under the certificate of the Bureau of Pensions $4,036, representing funds which had been paid to said institution by the Bureau of Pensions on behalf of plaintiff.

Upon plaintiff's discharge, St. Elizabeths Hospital deducted from said pension monies $776.83, which had been advanced to plaintiff for clothing and cash, and $3,259.17 on account of board from May 7, 1922, to February 6, 1930, in accordance with the Department's interpretation of the acts of February 20, 1905, and February 2, 1909 (U. S. C., title 24, section 165), and regulations of the Secretary of the Interior dated May 1, 1905.

No deduction for board was made after February 6, 1930, due to the fact that plaintiff did not remain in the hospital after that date but from that date to the date of his discharge, April 25, 1930, he was in the custody of his brother and reported from time to time as ordered by the medical staff at St. Elizabeths Hospital.

7. At the time of his discharge plaintiff protested against the refusal of St. Elizabeth's Hospital to pay him $3,259.17, which had been deducted and retained on account of his board.

8. During the time plaintiff was confined at St. Elizabeths Hospital, no claim was made on his behalf as to his right to receive, without any deduction on account of his board, pension monies paid to said institution by the Pension Bureau. On June 23, 1930, an application was made

on his behalf by Francis W. Hill, [illegible] order from the Director of the Veterans' Bureau authorizing and directing his hospitalization [illegible] from the effective date of the World War Veterans' Act, as amended by the act of June 7, [illegible] discharge. On September 12, 1930 [illegible] [fol. 11] Veterans' Bureau decided [illegible] tion was made for hospitalization [illegible] acting in his behalf, the Bureau [illegible] determining the question of plaintiff's hospitalization and as he had been discharged [illegible] the question was moot and there was [illegible] for the Director of the Bureau to issue [illegible] authorizing hospitalization in such [illegible]

9. On August 13, 1931, the United States Veterans' Bureau issued to the plaintiff a "Certificate of Hospitalization of a veteran", under section 202 (10) of the World War Veterans' Act, 1924, as amended, the pertinent portion of which certificate is as follows:

"This is to certify that Lewis [illegible] a veteran of Span.-Amer. War within the meaning of section 202 (10) of the World War Veterans' Act, 1924, as amended, and he is, therefore, entitled to hospital treatment and necessary traveling expenses incident thereto when properly authorized by the Veterans' Bureau, provided the requirements of law are complied with regarding the physical condition of the veteran at the time of application for hospital admission and the character of hospital facilities to which he may be admitted in accordance with. (Section 202 (10) does not authorize hospitalization or treatment in foreign countries.)"

10. St. Elizabeths Hospital [illegible] now under the control of the Veterans' Bureau, but the Veterans' Administration has the right to make use of its facilities for any [illegible]

11. On March 10, 1933, as a result of proceedings had in the Supreme Court of the District of Columbia, plaintiff was adjudicated to be of sound [illegible]

CONCLUSION [illegible]

Upon the foregoing special findings [illegible] made part of the judgment herein, [illegible]

conclusion of law, that the plaintiff is not entitled to recover, and it is therefore ordered that his petition be dismissed.

Judgment is rendered against the plaintiff in favor of the United States for the cost of printing the record in this case, the amount thereof to be ascertained by the clerk and collected by him according to law.

OPINION

GREEN, Judge, delivered the opinion of the court:

The plaintiff, an honorably discharged enlisted man of the United States Army, brings this suit to recover money deducted from his pension on account of his board from May 7, 1922, to February 6, 1930, while he was an inmate of St. Elizabeths Hospital.

There is no dispute over the facts which, so far as necessary thereof to be considered in deciding this case, are hereinafter set forth.

Plaintiff enlisted in the United States Army on November 30, 1897, and served until January 25, 1907, under three enlistments, which included service in the Spanish American War and the Philippine insurrection. At the completion of his enlistments he was honorably discharged. Afterwards he was indicted in the District of Columbia for assault with a dangerous weapon. He does not, however, appear to have been tried on this charge but was declared [*2] by a jury to be of unsound mind; and, pursuant to section 927 of the Code of the District of Columbia, the Secretary of the Interior ordered that he be confined in the Government Hospital for the Insane (now St. Elizabeths Hospital), and that if he be not indigent his estate be charged with the expense of his support in this institution. Accordingly he was admitted to this hospital on June 19, 1911. On April 25, 1930, he was discharged in the custody of his brother. The parties have stipulated that while plaintiff was confined in the hospital he was suffering from a neuropsychiatric ailment and was of unsound mind. Beginning with August 8, 1921, the plaintiff was allowed a pension by the Government which was paid to the Superintendent of St. Elizabeths Hospital in accordance with law. When plaintiff was discharged there was to his credit on the books of the hospital $4,036 which had been paid by the Bureau of Pensions on his behalf. He was charged

with $776.83 which had been advanced to him for clothing and cash, and $3,259.17 on account of board from May 7, 1922, to February 6, 1930, in accordance with the act of February 2, 1909, and the Interior Department regulations made pursuant thereto. No objection is made to the deduction on account of clothing and cash, but when discharged plaintiff protested against the refusal of the hospital to pay him the sum that had been deducted on account of his board, and the issue in the case is whether this sum was lawfully retained.

It is contended on behalf of the plaintiff that legislation subsequent to the act above referred to made this deduction illegal. This renders it necessary that we should consider the statutes upon which plaintiff bases his claim and the proceedings of the Veterans' Bureau.

On June 23, 1930, an application was made on behalf of the plaintiff for an order from the Director of the Veterans' Bureau authorizing and directing his hospitalization at said institution from the effective date of the World War Veterans' Act, as amended by the act of June 7, 1924, to the date of his discharge, but the Bureau decided that as no previous application had theretofore been made for his hospitalization it had no opportunity to determine his right thereto, and as he had been discharged from the institution the question was moot, and there was no authority in law for the issuance of a retroactive order authorizing his hospitalization. On August 13, 1931, the Veterans' Bureau certified that plaintiff was recognized as a veteran of the Spanish American War within the meaning of section 202 (10) of the World War Veterans' Act of 1924, as amended, and that he was entitled to receive hospital treatment, provided the requirements of said section regarding his physical condition at the time of the application for hospital admission were complied with. It should be noted in this connection that St. Elizabeths Hospital has never been and is not now under the control of the Veterans' Administration, but the Veterans' Administration has the right to and does make use of the facilities of this hospital for insane veterans. As bearing on his right to bring this suit it may be also noted that March 10, 1933, the plaintiff was duly adjudicated by the Supreme Court of the District of Columbia to be of sound mind.

The plaintiff having been duly awarded a pension, it appears to be the theory of his case as stated by counsel that

all that is necessary to be shown on his behalf to entitle him to a judgment is that he was suffering from an ailment which under the law entitled him to hospitalization and [fol. 13] that he was hospitalized in a Government hospital. In support of this contention plaintiff relies upon that portion of section 202 (10) of the World War Veterans' Act, 1924, as amended by section 9 of the act of July 2, 1926, which provides:

"That the pension of a veteran entitled to hospitalization under this subdivision [section] shall not be subject to deduction which such veteran is hospitalized in any Government hospital, for board, maintenance, or any other purpose incident to hospitalization."

In quoting this provision in their respective briefs, counsel for plaintiff and defendant do not exactly agree, plaintiff using the word "section" and defendant the word "subdivision." This, however, is only an apparent and not a real difference, being caused by the fact that plaintiff's counsel quotes from the United States Code, which in some instances uses section numbers for what the statute has only numbered as a subdivision, and counsel for defendant uses the language of the statute itself.

As the case is stated on behalf of the plaintiff, it is a very simple one. He was duly awarded a pension as a veteran. The findings show that he was suffering from an ailment under which he could be hospitalized, and he was in fact hospitalized in a Government hospital. This, plaintiff contends, is all that is necessary under the statute to entitle him to a judgment, but as we view the case there are other matters to be considered, and first of all we must determine whether this court is authorized to consider the evidence with relation to his ailment and thereupon determine that he was entitled to hospitalization.

The World War Veterans' Act, 1924 (43 Stat. 607), as amended by section 1 of the act of July 3, 1930 (46 Stat. 991, U. S. C., Title 38, c. 10, sec. 426) provides:

"Sec. 5. The director, subject to the general direction of the President, shall administer, execute, and enforce the provisions of this act, and for that purpose shall have full power and authority to make rules and regulations, not inconsistent with the provisions of this act, which are necessary or appropriate to carry out its purposes, and

shall decide all questions arising under this act; and all decisions of questions of fact and law affecting any claimant to the benefits of Titles II, III, or IV of this act shall be conclusive, except as otherwise provided herein."

This provision has been held to commit to the Director of the Bureau the duty and authority of administering its provisions and deciding all questions under it and that his decision is conclusive and not subject to judicial review except under circumstances not necessary to mention here. See Silberschein v. United States, 266 U. S. 221, 225, and United States v. Williams, 278 U. S. 255, wherein it is said with reference to a similar provision that "exclusive authority is vested in the Director of the Bureau *to entertain and pass upon* all claims for payment of these certificates" (for adjusted compensation). [Italics ours.]

If, in some other case, a veteran who unquestionably was suffering from some ailment which the statute specified as a cause for hospitalization began an action in a Federal court of general jurisdiction asking that he be granted hospitalization, we think the court would not hesitate to declare that it had no jurisdiction of the matter.

[fol. 14] In our opinion, the same rule applies to the case at bar as in the hypothetical case above stated. While the statute specifies certain physical ailments as a cause for hospitalization of a veteran, we think that for the purpose of applying the World War Veterans' Act no court is authorized to consider the fact of their existence and therefrom decide that he is entitled to hospitalization under the act. This we think is true no matter how obvious the fact may be. The Director of the Bureau, as we construe the law, alone is authorized to determine the facts or institute proceedings for the determination thereof, and order the hospitalization of the veteran or certify to his right thereto. As recited above, no application was made to the Director of the Bureau until after plaintiff's discharge from the hospital, and no decision was made by the Director as to his right to hospitalization during the period in question. Under the provisions of the statute and the facts in the case we think this court is not authorized to determine whether plaintiff was entitled to hospitalization during the period he was an inmate of St. Elizabeths Hospital, or to entertain a case which depends upon a determination of that matter and pass upon the questions so involved.

It is also urged on behalf of defendant that conceding, for the purposes of the argument, that the plaintiff was entitled to hospitalization during the period in question, the provisions of the statute with reference to deductions for board have no application under the facts of this case. As we have already shown, the provision upon which plaintiff relies is found in subdivision 10 of section 202 of the World War Veterans' Act, as amended, and applies only when a veteran is "entitled to hospitalization under this subdivision." The subdivision begins with the provision that "all hospital facilities under the control and jurisdiction of the Bureau shall be available for every honorably discharged veteran of the Spanish-American War, the Philippine insurrection", etc., suffering from neuropsychiatric ailments, and it is further provided that the Director is authorized, so far as the Government facilities permit, to furnish such hospitalization. The contention is made on behalf of the defendant that the subdivision applies only to hospital facilities under the control and jurisdiction of the Bureau. The question raised is not free from doubt but we are inclined to think that this is the proper construction of the act and that it was not intended to apply to hospitals like St. Elizabeths which are not under the control ~~of the Bureau~~.

It is further contended on behalf of the defendant that in no event can plaintiff make any claim on account of the deduction of pension money before July 2, 1926, which was the time that the section under which he claims was enacted, but under our holding on the principal issue in the case it is not necessary to determine the question thus raised.

It follows that the plaintiff's petition must be dismissed. It is so ordered.

Whaley, Judge, and Williams, Judge, concur.

Littleton, Judge, and Booth, Chief Justice, dissent.

[fol. 15] V. JUDGMENT

At a Court of Claims held in the City of Washington on the 6th day of November, A. D., 1933, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made part of the judgment herein, the court decides, as a conclusion of law, that the plaintiff is not entitled to recover, and it is therefore ordered that his petition be, and the same hereby is, dismissed.

VI. Proceeding Had in Case

On December 26, 1933, the plaintiff filed a motion for leave to secure transcript of record in forma pauperis.

Said motion was allowed by the court January 18, 1934.

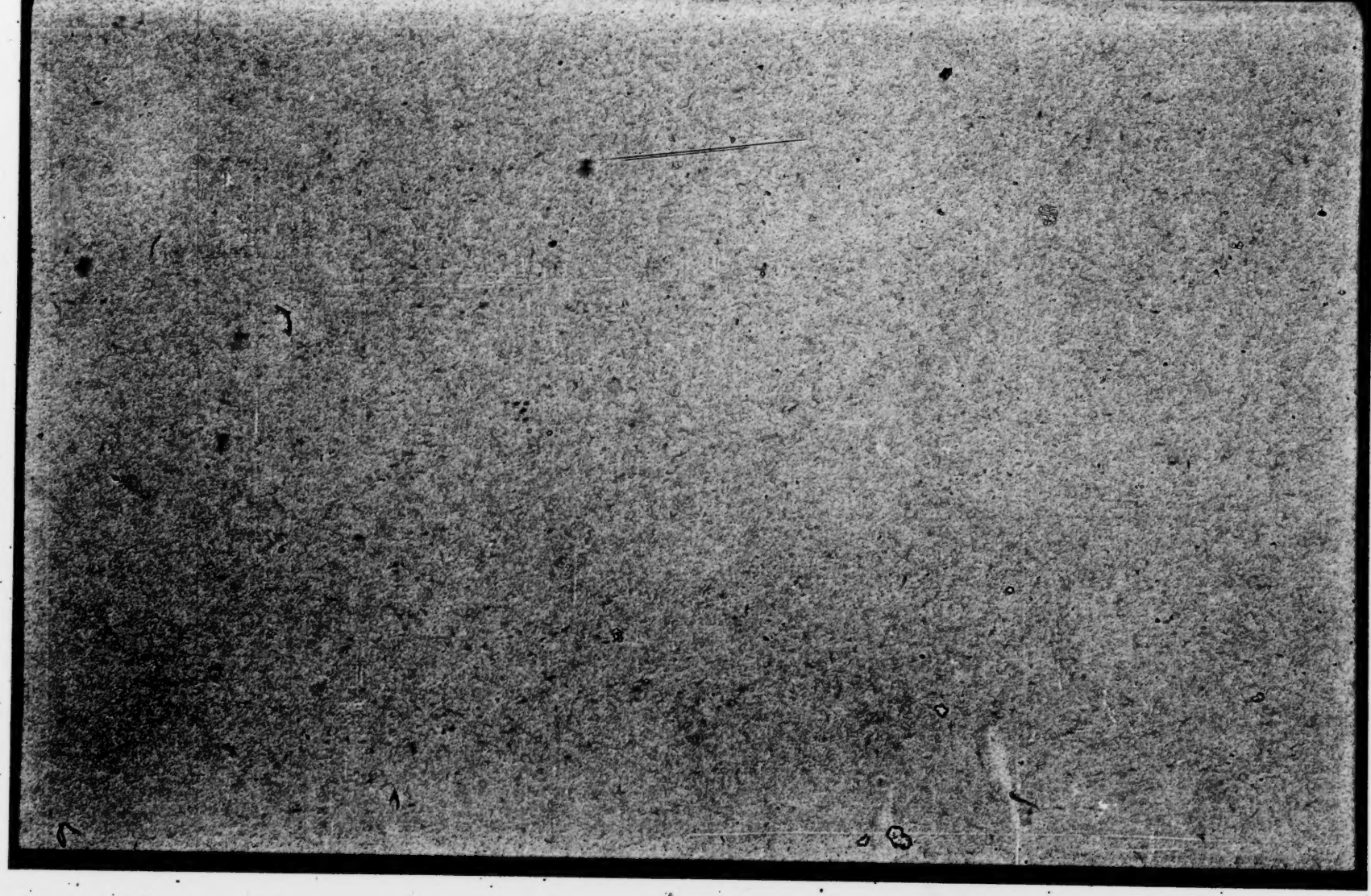
[fol. 16] Clerk's Certificate to foregoing transcript omitted in printing.

Endorsed on cover: In forma pauperis. File No. 38,337. Court of Claims. Term No. 734. Lewis Reynolds, Petitioner, vs. The United States. Petition for a writ of certiorari and exhibit thereto. Filed January 20, 1934. File No. 734, O. T., 1933.

[fol. 17] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 2, 1934

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.



FILE COPY

JAN 20 1934
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 734

LEWIS REYNOLDS, PETITIONER,

vs.

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS AND BRIEF IN SUPPORT THEREOF.

FRANCIS W. HILL, JR.,
Counsel for Petitioner.

INDEX

SUBJECT INDEX

Page

Petition for writ of certiorari 1
Statement 1
Matters involved 2
Questions presented 3
Specification of errors to be urged 3
Reasons for granting the writ 3
Prayer for writ of certiorari 4
Opinions below 4
Jurisdiction 4
Statutes 4
Conclusion 4

STATUTE CITED

Act of Dec. 7, 1923, Sec. 3 (a) 2
World War Veterans' Act (1924), Sec. 202 (10), as amended by Sec. 3 of the Act of July 3, 1930 (46 Stat. 990, 38 U.S.C. 1 Supp. Title 38, sec. 484) 2

TEXT BOOK CITED

Lewis, Sutherland Statutory Construction, p. 658, p. 1153 3

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 734

LEWIS REYNOLDS, PETITIONER,

vs.

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

Petitioner prays that a writ of certiorari issue to review the judgment of the Court of Claims rendered by that Court against the petitioner on the 6th day of November, 1933.

Statement.

This case was tried before the Court of Claims which decided against the petitioner by a three to two decision, the Chief Justice and Judge Littleton dissenting. There is no dispute as to the facts. Petitioner is a veteran of the Spanish American War and the Philippine Insurrection; was honorably discharged from the service on January 25, 1907; was on June 6, 1911, found to be of unsound mind; was committed to St. Elizabeth's Hospital. (R., p. 6) and

there remained until April 25, 1930, when he was discharged (Rec., p. 7) and was thereafter judicially determined to be of sound mind (Rec., p. 10). Because of his army service, petitioner became entitled to, and was allowed, a pension which was paid to the Superintendent of said hospital during his commitment (Rec., pp. 6-7). This pension money, pursuant to law, was deposited by the Superintendent in the United States Treasury, subject to withdrawal by said Superintendent (Rec., p. 7). At the time of petitioner's discharge from St. Elizabeth's Hospital there had been credited on the books of said institution, under the certificate of the Bureau of Pensions, $4,036.00 representing pension money received by said hospital from the Bureau of Pensions on behalf of petitioner. Upon the petitioner's discharge, St. Elizabeth's Hospital deducted from said sum $776.83, which had been advanced to plaintiff for clothing and cash, and the balance or $3,259.17 on account of board (Rec., p. 7). The petitioner seeks to recover the sum of $3,259.17 which was deducted on account of his board.

Statute Involved

Section 202 (10) of the World War Veterans' Act, 1924, as amended by Section 9 of the Act of July 2, 1926 (44 Stat. 790, 796-797; U. S. C., Title 38, c. 10, Sec. 484):

> "That all hospital facilities under the control and jurisdiction of the bureau shall be available for every honorably discharged veteran of the Spanish American War, the Philippine insurrection, the Boxer rebellion, or the World War suffering from neuro-psychiatric or tubercular ailments and diseases, . . . regardless whether such ailments or diseases are due to military service or otherwise, including traveling expenses as granted to those receiving compensation and hospitalization under this Act. The director is further authorized, so far as he shall find that exist

ing Government facilities permit, to furnish hospitalization and necessary traveling expenses incident to hospitalization to veterans of any war, military occupation, or military expedition. * * * not dishonorably discharged, without regard to the nature or origin of their disabilities: * * * Provided, That preference to admission to any Government hospital for hospitalization under the provisions of this subdivision shall be given to those veterans who are financially unable to pay for hospitalization and their necessary traveling expenses: * * * And provided further, *That the pension of a veteran entitled to hospitalization under this subdivision shall not be subject to deduction, while such veteran is hospitalized in any Government hospital, for board, maintenance, or any other purpose incident to hospitalization*: Provided further, That the Act of May 4, 1898, entitled 'An Act making appropriations for the naval service for the fiscal year ending June 30, 1899, and for other purposes', the Act of February 28, 1861, as amended by the Act of February 2, 1909, relative to the Government hospital for the insane in the District of Columbia, or any other Act, in so far as they are inconsistent with the provisions of this section be, and they are, hereby modified accordingly." (Italics supplied.)

Question Presented.

The question is: Had the Superintendent, in view of Section 202 (10), of the World War Veterans' Act, 1924, as amended by Section 9 of the Act of July 2, 1926, have the right to make this deduction of pension money on account of board?

Specification of Errors to be Urged.

The Court of Claims erred:

1. In holding that petitioner was not entitled to his pension money upon his discharge from St. Elizabeth's Hospital.

2. In holding that the superintendent of St. Elizabeth's Hospital was justified in arbitrarily deducting the pension money in payment for petitioner's board while he was confined at St. Elizabeth's Hospital.

Reasons for Granting the Writ.

1. The Court of Claims, by a three-to-two decision, has decided an important question of federal law in an untenable way.

2. The Court of Claims by a three to two decision has decided a question of substance relating to the construction or application of a statute of the United States directly in conflict with the decisions of this Court relating to construction of statutes.

3. The Court of Claims, in its three to two decision, did violence to the plain and unambiguous mandate of the applicable statute in this case.

Respectfully submitted,

FRANCIS W. HILL, JR.,
Counsel for Petitioner.

BRIEF IN SUPPORT OF THE PETITION.

The opinion of the Court is found in advance sheets of November 6, 1933, in the case of *Lewis Reynolds v. United States*, No. M-408.

Jurisdiction.

The jurisdiction of this court is invoked under Section 3 (b) of the Act of February 13, 1925.

Questions Presented, Statutes Involved, etc.

A statement of the questions presented, statute involved and specifications of error to be urged will be found in the Petition.

ARGUMENT.

The facts are undisputed and the Court of Claims made a special Finding of Facts.

Summarizing the facts, plaintiff, a citizen of the United States, served as an enlisted man in the Army from 1897 to 1907 under three enlistments, from each of which he was honorably discharged by reason of expiration of term of service. In 1911 he was found to be of unsound mind by the Supreme Court of the District of Columbia and thereafter committed to St. Elizabeth's Hospital (Rec., pp. 5-6), where he remained until 1930, when he was discharged therefrom (Rec., p. 7), and thereafter was adjudged by the same Court to be of sound mind (Rec., p. 10).

Because of his army service, plaintiff became entitled to, and was allowed, a pension which was paid to the Superintendent of St. Elizabeth's Hospital during his commitment at that institution (Rec., pp. 6-7). This pension money, pursuant to law, was deposited by the Superintendent in the United States Treasury, subject to withdrawal by said

Superintendent (Rec., p. 7). At the time of plaintiff's discharge, there was credited on the books of St. Elizabeth's Hospital to his account, $4,036.00, representing pension received by said Hospital from the Bureau of Pensions. Instead of this sum being turned over to him on his discharge, $776.83 was deducted therefrom on account of clothing and cash from time to time theretofore furnished plaintiff, with which deduction we have no dispute. In addition, however, the entire balance, namely, $3,259.17 was deducted and retained as payment for board furnished petitioner at St. Elizabeth's Hospital (Rec., p. 7); and it is this sum, deducted and retained over petitioner's protest, which is made the basis for this suit.

This deduction is in direct contravention of Section 202 (10) of the World War Veterans' Act, quoted in the petition, which provides that:

> "the pension of a veteran entitled to hospitalization under this section shall not be subject to deduction while such veteran is hospitalized in any Government hospital for board * * *"

This Act expressly repeals the earlier acts under which the Government derived authority for the retention of pension money for board. Petitioner was entitled to hospitalization under this Act, as a matter of right for the Act states that the hospital facilities:

> "shall be available for every honorably discharged veteran of the Spanish-American War, the Philippine insurrection, the Boxer Rebellion or the World War, suffering from neuro-psychiatric or tubercular ailments and diseases."

Petitioner was such a veteran and was suffering from such a disease (Rec., p. 7). He was therefore entitled to hospitalization and the Act provides "that the pension of

such a veteran shall not be subject to deduction" while in a Government hospital, and St. Elizabeth's is such a hospital. The Government contends that the matter of hospitalizing veterans is discretionary with the Director. This argument might be plausible with respect to general diseases for as to them the Act states:

> "The Director is further authorized, so far as he shall find that existing Government facilities permit, to furnish hospitalization * * *"

But as to neuro-psychiatric and tubercular patients, the Act states that the facilities "shall be available".

The words "shall be available" are mandatory—the petitioner, pursuant to the act, had the absolute right to hospitalization. See *Lewis Sutherland Statutory Construction*, p. 638,

> "Affirmative words which are imperative, and therefore mandatory, imply a negative of anything contrary or alternative to the direction so given."

The same author states at p. 1155:

> "The word 'shall' in its ordinary sense is imperative. When the word 'shall' is used in a statement, and a right or benefit to any one depends upon giving it an imperative construction, then that word is to be regarded as peremptory."

This is not in any sense a pension case—the pension was due and was paid—the sole question is the right of the St. Elizabeth's Hospital to retain the money paid to it for the petitioner. If the petitioner had been a tubercular patient and had requested hospitalization, the Director, under the law, had no discretion in that matter and the tubercular patient would have been entitled to hospitalization as a matter of right. This petitioner was of unsound mind dur-

ing his hospitalization and could not, therefore, make a legal request for hospitalization. He needed hospitalization as was found by the jury and he was actually hospitalized. To deny him the benefit of the Act simply because he did not make the request, which he could not legally do, is an arbitrary and unwarranted discrimination against a poor unfortunate lunatic.

Conclusion.

It is respectfully submitted that this case is one calling for the exercise of the supervisory powers of this Court.

Respectfully submitted,

FRANCIS W. HILL, JR.

(4543-C)

INDEX

Page

In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 734

LEWIS REYNOLDS, PETITIONER

v.

THE UNITED STATES

ON A PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (R. 9–13) is not yet officially reported.

JURISDICTION

The judgment of the Court of Claims was entered November 6, 1933 (R. 13–14). The petition for a writ of certiorari was filed January 20, 1934 (R. 14). The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925.

QUESTION PRESENTED

Whether Section 202 (10) of the World War Veterans' Act of 1924, as amended by Section 9 of the Act of July 2, 1926, precluded the superintendent of a Government hospital, which was not under the supervision of the Director of the Vet-

erans' Bureau, from deducting the cost of board in such hospital from the pension of an insane veteran of the Spanish-American War, in the absence of a finding by the Director of the Veterans' Bureau that the veteran was entitled to the benefits of the Act.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendix, *infra*, pp. 9–14.

STATEMENT

The findings of fact of the Court of Claims (R. 5–8) may be summarized as follows:

The petitioner enlisted in the United States Army on November 30, 1897, and, having served three enlistments, was honorably discharged on January 25, 1907 (R. 5–6). In the course of these enlistments, the petitioner served in the Spanish-American War and the Philippine Insurrection (R. 6).

In May 1911, the petitioner was indicted in the District of Columbia for assault with a deadly weapon, was adjudged by a jury to be of unsound mind, and was thereafter committed to the Government Hospital for the Insane (now St. Elizabeths Hospital) by the Secretary of the Interior, who directed that if the petitioner be not indigent his estate be charged with the expense of his support in that institution (R. 6). The petitioner remained in St. Elizabeths Hospital from June 19, 1911, until April 25, 1930, during which time he was

suffering from a psychiatric ailment and was of unsound mind (R. 6–7). On the latter date he was released in the custody of his brother (R. 7), and on March 10, 1933, was adjudged by the Supreme Court of the District of Columbia to be of sound mind (R. 8).

On April 21, 1922, the petitioner's claim for a pension was allowed, effective August 8, 1921, and a pension certificate was issued to him (R. 6). The pension was paid periodically to the Superintendent of St. Elizabeths Hospital for the petitioner's account. At the time of the petitioner's discharge the amounts so paid aggregated $4,036 (R. 6–7). Upon the discharge of the petitioner from the hospital, the sum of $776.83, which had been expended on clothing, and a charge of $3,259.17, for board from May 7, 1922, to February 6, 1930, were deducted from the pension money which had been received on his account (R. 7). The petitioner protested against the refusal of the hospital to pay over to him the money which had been deducted for board, although during the time he had been confined in the hospital no claim had been made on his behalf as to his right to receive the pension without deduction (R. 7).

On June 23, 1930, an application was made to the Director of the Veterans' Bureau on behalf of the petitioner for an order authorizing and directing his hospitalization at St. Elizabeths Hospital from the effective date of the World War Veterans' Act of 1924 to the date of his discharge (R. 8). The

Director found that no application for the hospitalization of the petitioner had been filed while the petitioner required hospitalization, and held that he was without authority of law to issue a retroactive order directing hospitalization (R. 8). On August 13, 1931, the Veterans' Bureau issued a certificate recognizing the petitioner as a veteran of the Spanish-American War and declaring him to be entitled to hospitalization if required, when duly authorized by the Bureau (R. 8).

St. Elizabeths Hospital has never been under the control of the Veterans' Bureau, but the Bureau has the right to, and does, use that institution for the care of insane veterans (R. 8).

The petitioner brought suit in the Court of Claims, alleging that under Section 202 (10) of the World War Veterans' Act of 1924, as amended, he was entitled to hospitalization as an insane veteran of the Spanish-American War without deduction from his pension for the cost of his maintenance in the hospital, and asking judgment for the amount deducted on account of board. The court held that his right to hospitalization under that section was a matter for the Director of the Veterans' Bureau alone to determine, and that since the Director had not passed on the facts the court was without authority to allow recovery.

ARGUMENT

The petitioner contends that since the court found that he was a veteran of the Spanish-American War and was of unsound mind during the time

that he was confined in St. Elizabeths Hospital, Section 202 (10) of the World War Veterans' Act of 1924, as amended (*infra*, p. 11) made it mandatory that he be furnished hospitalization by the Veterans' Bureau, that he was therefore "entitled to hospitalization" within the meaning of the proviso declaring that the pension of a veteran entitled to hospitalization under that subdivision shall not be subject to deduction for his maintenance while in a Government hospital, and that consequently the superintendent of St. Elizabeths Hospital had no authority to charge against his pension any part of the cost of his board in that institution. This contention, we submit, ignores the intent of Congress with respect to the manner in which the right to hospitalization under Section 202 (10) is to be determined.

It is apparent that Congress intended that the Veterans' Bureau should have the responsibility of deciding, in the first instance, at least, who is entitled to the benefits of the Act. Section 5 (*infra*, p. 10) confers upon the Director the duty of administering, executing, and enforcing the provisions of the Act, authorizes him to make rules and regulations for carrying it into effect, and declares that his decision on all questions of fact shall be final.[1] In the exercise of that authority the Direc-

[1] This section was amended by Section 1 of the Act of July 3, 1930, c. 849, 46 Stat. 991 (U.S.C. Sup. VI, Title 38, Sec. 426), so as to provide that the decision of the Director should also be conclusive on questions of law, except as otherwise specified.

tion, and the Director, not having been afforded an opportunity to consider the matter, never determined that he was in need of treatment. Consequently, the petitioner did not fall within the class of veterans deductions from whose pensions were prohibited by the Act. Until his release he remained hospitalized, not as a veteran, but as an insane person from the District of Columbia, committed under the Act of April 14, 1909 (*infra*, p. 20); and his pension was and remained subject to deduction for board by virtue of the Act of February 2, 1929 (*infra*, p. 21). See 6 Comp. Gen. 126.

While it may seem that the decision below works a hardship upon the petitioner, it is to be observed that he obtained a pension in the year 1922 and was released in the custody of his brother in 1930. It does not appear, therefore, that he had no friend or relative who might have initiated appropriate proceedings in his behalf.

CONCLUSION

We submit that the decision below is correct and that the petition should be denied.

Respectfully submitted.

J. Crawford Biggs,
Solicitor General.
George C. Sweeney,
Assistant Attorney General.
H. Brian Holland,
Paul A. Sweeney,
Attorneys.

March 1934.

APPENDIX

STATUTES

The Act of April 14, 1906, c. 1624, 34 Stat. 113, provides in part:

> * * * whenever a person is indicted or is charged by an information for an offense, and before trial or after a verdict of guilty, prima facie evidence is submitted to the court that the accused is then insane, the court may cause a jury to be impaneled * * * to inquire into the insanity of the accused * * *. If the jury shall find the accused to be then insane, * * * the court may certify the fact to the Secretary of the Interior, who may order such person to be confined in the hospital for the insane, and said person and his estate shall be charged with the expense of his support in the said hospital. * * *

The Act of February 2, 1909, c. 58, 35 Stat. 592, (U.S.C., Title 24, Sec. 165) provides in part:

> * * * During the time that any pensioner shall be an inmate of the Government Hospital for the Insane, all money due or becoming due upon his or her pension shall be paid by the pension agent to the superintendent or disbursing agent of the hospital, upon a certificate by such superintendent that the pensioner is an inmate of the hospital and is living, and such pension money shall be by said superintendent or disbursing agent disbursed and used, under regulations

to be prescribed by the Secretary of the Interior, for the benefit of the pensioner, * * * and to pay his or her board and maintenance in the hospital. * * *

Section 5 of the World War Veterans Act, 1924, c. 320, 43 Stat. 607, 608 (U. S. C., Title 38, Sec. 426) provides as follows:

> SEC. 5. The director, subject to the general direction of the President, shall administer, execute, and enforce the provisions of this Act, and for that purpose shall have full power and authority to make rules and regulations, not inconsistent with the provisions of this Act, which are necessary or appropriate to carry out its purposes, and shall decide all questions arising under this Act and all decisions of questions of fact affecting any claimant to the benefits of Title II, III, or IV of this Act, shall be conclusive except as otherwise provided herein. All officers and employees of the bureau shall perform such duties as may be assigned them by the director. All official acts performed by such officers or employees specially designated therefor by the director shall have the same force and effect as though performed by the director in person. Wherever under any provision or provisions of the Act regulations are directed or authorized to be made, such regulations, unless the context otherwise requires, shall or may be made by the director. The director shall adopt reasonable and proper rules to govern the procedure of the divisions and to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits of compensation, insurance, vocational training or maintenance and support allowance provided for in this

Act, the forms of application of those claiming to be entitled to such benefits, the methods of making investigations and medical examinations, and the manner and form of adjudications and awards.

Section 202 (10) of the World War Veterans' Act, *supra*, as amended by Section 9 of the Act of July 2, 1926, c. 723, 44 Stat. 790, 794, 796 (U.S.C. App., Title 38, Sec. 484), provides:

> SEC. 202 (10). That all hospital facilities under the control and jurisdiction of the bureau shall be available for every honorably discharged veteran of the Spanish-American War, the Philippine insurrection, the Boxer rebellion, or the World War suffering from neuropsychiatric or tubercular ailments and diseases, * * * regardless whether such ailments or diseases are due to military service or otherwise, including traveling expenses as granted to those receiving compensation and hospitalization under this Act. The director is further authorized, so far as he shall find that existing Government facilities permit, to furnish hospitalization and necessary traveling expenses incident to hospitalization to veterans of any war, military occupation, or military expedition, * * * not dishonorably discharged, without regard to the nature or origin of their disabilities: * * * *Provided*, That preference to admission to any Government hospital for hospitalization under the provisions of this subdivision shall be given to those veterans who are financially unable to pay for hospitalization and their necessary traveling expenses: * * * *And provided further*, That the pension of a veteran entitled to hospitalization under this subdivision shall not be subject to deduction.

while such veteran is hospitalized in any Government hospital, for board, maintenance, or any other purpose incident to hospitalization: *Provided further*, That the Act of May 4, 1898, entitled "An Act making appropriations for the naval service for the fiscal year ending June 30, 1899, and for other purposes", the Act of February 28, 1861, as amended by the Act of February 2, 1909, relative to the Government hospital for the insane in the District of Columbia, or any other Act, insofar as they are inconsistent with the provisions of this section be, and they are, hereby modified accordingly.

REGULATIONS

Section 9121 of Veterans' Bureau Regulation No. 155, promulgated September 15, 1926 (U.S. Veterans' Bureau Regulations and Procedure, 1928, Part 1, p. 187) provided:

> SEC. 9121. The pension of a veteran entitled to hospitalization under section 202 (10) of the World War veterans' act, as amended, shall not be subject to deduction for board, maintenance, or any other purpose incident to hospitalization while such veteran is hospitalized in any Government hospital. When a pensioner entitled to hospitalization under section 202 (10) of the World War veterans' act, as amended, is already hospitalized by authority of and under the jurisdiction of a department other than the United States Veterans' Bureau, such patient will not be transferred to the jurisdiction of the United States Veterans' Bureau except on proper application to be submitted in accordance with existing instructions, such application to be forwarded to central office for recommendation by the

medical director to the director for approval. (September 30, 1926.)

This section was reissued on November 15, 1926, as a part of Regulation No. 160 (p. 189) and again on August 25, 1928, as Section 9122 of Regulation No. 196 (p. 220).

The practice of the Bureau with respect to pensioners already hospitalized by authority of another Federal agency was later set forth in more detail in paragraphs 6056 and 6059 of the Regulations, effective June 16, 1931. These paragraphs read as follows:

6056. *Disposition of Already Hospitalized Veterans.*—If retired army or navy (including marine corps) personnel, or other persons specified in paragraph 6048 who are potentially entitled to hospitalization under section 202 (10) World War veterans' Act, 1924, as amended, have been admitted to an army or navy hospital upon authorization other than that of the Veterans' Administration, the expense of such hospitalization will not be assumed until authorization is issued for the placing of the names of such persons on the rolls of Veterans' Administration beneficiaries in such hospitals, or for the transfers of such persons to United States veterans' hospitals. The fact that another federal agency has already hospitalized such persons will not automatically entitle them to be taken over by the Veterans' Administration. They will be required to apply, or, if they are incompetent, their legally appointed guardians, near relatives, or the hospital heads will apply for them, to be hospitalized under section 202 (10) World War veterans' Act, 1924, as amended. Their eligibility therefor having

been determined, their names will be placed on the list of those awaiting available beds, in the order of dates of application; and, unless an emergency is satisfactorily shown, such persons will not be granted priority in the furnishing of available beds over other applicants whose names precede theirs on the said lists. (June 16, 1931.)

6059. *Disposition of Pensioners Hospitalized by Federal Agencies Other Than the Veterans' Administration.*—When a pensioner entitled to hospitalization under section 202 (10) World War veterans' Act, 1924, as amended, is already hospitalized by authority of any federal agency other than the Veterans' Administration, the issuance of authorization for the placing of such pensioner's name on the rolls of Veterans' Administration patients at the institution where he is already hospitalized, or for his transfer therefrom to a United States veterans' hospital, will be governed by the conditions specified in paragraph 6056. (June 16, 1931.)

U. S. GOVERNMENT PRINTING OFFICE: 1934

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes and regulations involved	2
Statement	2
Summary of argument	5
Argument	7
Conclusion	21
Appendix (statutes and regulations)	22

CITATIONS

Cases:	
Anderson v. *United States*, 5 F.Supp. 269	20
Armstrong v. *United States*, 16 F. (2d) 387	12
Dunlap v. *United States*, 173 U.S. 65	20
Fawcus Machine Co. v. *United States*, 282 U.S. 375	18
Forbes v. *Welch*, 286 Fed. 765	12
Hines v. *Starnes*, 26 F. (2d) 997	12, 13
Hines v. *Welch*, 23 F. (2d) 979	12
Kalasanckas v. *Hines*, 38 F. (2d) 389, certiorari denied, 282 U.S. 837	12
Meadows v. *United States*, 281 U.S. 271	12
Norwegian Nitrogen Products Co. v. *United States*, 288 U.S. 294	18
Panama R.R. Co. v. *Johnson*, 264 U.S. 375	11
Silberschein v. *United States*, 266 U.S. 221	12
Smith v. *United States*, 56 F. (2d) 636	20
United States v. *Barnes*, 222 U.S. 513	11
United States v. *Hines*, 50 F. (2d) 330	12
United States v. *Jefferson Elec. Mfg. Co.*, No. 171, Oct. Term, 1933	11
United States v. *McLean*, 95 U.S. 750	20
United States v. *Sweet*, 245 U.S. 563	11
United States v. *Williams*, 278 U.S. 255	12
Statutes:	
Act of April 14, 1906, c. 1624, 34 Stat. 113	22
Act of February 2, 1909, c. 58, 35 Stat. 592 (U.S.C., Title 24, Sec. 165)	22
Act of October 6, 1917, c. 105, 40 Stat. 398	12
Act of August 9, 1921, c. 57, 42 Stat. 147	10, 12
Act of June 5, 1924, c. 264, 43 Stat. 390, 429	15
World War Veterans' Act, 1924, c. 320, 43 Stat. 607, 608, 620:	
Sec. 5 (U.S.C., Title 38, Sec. 426)	23
Sec. 202 (10) (U.S.C., Title 38, Sec. 484)	24

Statutes—Continued. Page

Act of May 1, 1926, c. 209, 44 Stat. 382 (U.S.C.App., Title 38, Sec. 364) 13
Act of July 2, 1926, c. 723, Sec. 9, 44 Stat. 790 (U.S.C. App., Title 38, Sec. 484) 24
Act of July 3, 1926, c. 751, 44 Stat. 826, 828 (U.S.C.App., Title 38, Sec. 620) 12
Act of May 29, 1928, c. 875, 45 Stat. 964, 967 17
Act of June 11, 1930, c. 462, 46 Stat. 556 16
Act of July 3, 1930, c. 849, 46 Stat. 991 (U.S.C.Sup. VII, Title 38, Sec. 426) 17
Act of July 3, 1930, c. 863, 46 Stat. 1016 (U.S.C. Sup. VII, Title 38, Sec. 11) 10
Act of May 21, 1932, c. 201, 47 Stat. 164 17
Act of June 24, 1932, c. 276, 47 Stat. 334 17

Regulations:
U.S. Veterans' Bureau Regulations and Procedure (1928):
Regulation No. 155, p. 187 25
Regulation No. 160, p. 189 26
Regulation No. 196, p. 220 26
General Order No. 292–C, p. 938 18
U.S. Veterans' Bureau Regulations and Procedure (1931):
Par. 6056 (medical) 26
Par. 6059 (medical) 27

Miscellaneous:
4 Comp. Gen. 445 15
6 Comp. Gen. 126 16
10 Comp. Gen. 94 16
Cong. Record, 69th Cong., 1st. Sess.:
p. 6909 13
p. 7534 13
p. 9553 20
p. 9565 20
House Report No. 338, 69th Congress, 1st Session 13
Digests of Legal Opinions Relating to Veterans' Bureau, 1926, Vol. 2, par. 1168 17

In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 734

LEWIS REYNOLDS, PETITIONER

v.

THE UNITED STATES

ON A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Court of Claims (R. 9–13) is not yet officially reported.

JURISDICTION

The judgment of the Court of Claims was entered November 6, 1933 (R. 13–14). The petition for a writ of certiorari was filed January 20, 1934 (R. 14), and was granted April 2, 1934 (R. 15). The jurisdiction of this Court rests upon Section 3 (b) of the Act of February 13, 1925.

QUESTION PRESENTED

Whether Section 202 (10) of the World War Veterans' Act of 1924, as amended by Section 9 of the Act of July 2, 1926, precluded the superintendent of a Government hospital, which was not under the supervision of the Veterans' Bureau, from deducting the cost of board in such hospital from the pension of an insane veteran of the Spanish-American War, in the absence of a finding by the Director of the Veterans' Bureau that the veteran was entitled to the benefits of the Act.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendix, *infra*, pp. 22–27.

STATEMENT

The findings of fact of the Court of Claims (R. 5–8) may be summarized as follows:

The petitioner enlisted in the United States Army on November 30, 1897, and, having served three enlistments, was honorably discharged on January 25, 1907 (R. 5–6). In the course of these enlistments, the petitioner served in the Spanish-American War and the Philippine Insurrection (R. 6).

In May, 1911, the petitioner was indicted in the District of Columbia for assault with a deadly weapon, was adjudged by a jury to be of unsound mind, and was thereafter committed to the Government Hospital for the Insane (now St. Eliza-

beths Hospital) by the Secretary of the Interior, who directed that if the petitioner be not indigent his estate be charged with the expense of his support in that institution (R. 6). The petitioner remained in St. Elizabeths Hospital from June 19, 1911, until April 25, 1930, during which time he was suffering from a psychiatric ailment and was of unsound mind (R. 6–7). On the latter date he was released in the custody of his brother (R. 7), and on March 10, 1933, was adjudged by the Supreme Court of the District of Columbia to be of sound mind (R. 8).

On April 21, 1922, the petitioner's claim for a pension was allowed, effective August 8, 1921, and a pension certificate was issued to him (R. 6). The pension was paid periodically to the Superintendent of St. Elizabeths Hospital for the petitioner's account. At the time of the petitioner's discharge the amounts so paid aggregated $4,036 (R. 6–7). Upon the discharge of the petitioner from the hospital, the sum of $776.83, which had been expended on clothing, and a charge of $3,259.17, for board from May 7, 1922, to February 6, 1930, were deducted from the pension money which had been received on his account (R. 7). The petitioner protested against the refusal of the hospital to pay over to him the money which had been deducted for board, although during the time he had been confined in the hospital no claim had been made on his behalf as to his right to receive the pension without deduction (R. 7).

On June 23, 1930, an application was made to the Director of the Veterans' Bureau on behalf of the petitioner for an order authorizing and directing his hospitalization at St. Elizabeths Hospital from the effective date of the World War Veterans' Act of 1924 to the date of his discharge (R. 8). The Director found that no application for the hospitalization of the petitioner had been filed while the petitioner required hospitalization, and held that he was without authority of law to issue a retroactive order directing hospitalization (R. 8). On August 13, 1931, the Veterans' Bureau issued a certificate recognizing the petitioner as a veteran of the Spanish-American War and declaring him to be entitled to hospitalization if required, when duly authorized by the Bureau (R. 8).

St. Elizabeths Hospital has never been under the control of the Veterans' Bureau, but the Bureau has the right to, and does, use that institution for the care of insane veterans (R. 8).

The petitioner brought suit in the Court of Claims, alleging that under Section 202 (10) of the World War Veterans' Act of 1924, as amended, he was entitled to hospitalization as an insane veteran of the Spanish-American War without deduction from his pension for the cost of his maintenance in the hospital, and asking judgment for the amount deducted on account of board. The court held that his right to hospitalization under that section was a matter for the Director of the Vet-

erans' Bureau alone to determine, and that since the Director had not passed on the facts the court was without authority to allow recovery.

SUMMARY OF ARGUMENT

I

The instant case turns upon the question whether a person is "entitled to hospitalization" under Section 202 (10) of the World War Veterans' Act of 1924, as amended by Section 9 of the Act of July 2, 1926 (*infra*, p. 24), in the absence of a finding by the Director of the Veterans' Bureau that he is a veteran and is suffering from one of the diseases specified in that section. If a finding by the Director is not necessary, and the existence of the requisite facts may be determined by a court, then the petitioner should have judgment. But we submit that the Act confers upon the Director alone authority to decide who is entitled to hospitalization and that a favorable finding by the Director is a condition precedent to the right to the benefits of the Act.

Administration of the various Acts for the relief of veterans has been entrusted to the Director of the Veterans' Bureau.[1] The World War Veterans' Act of 1924, like other Acts having to do with vet-

[1] In 1930 the Veterans' Bureau was merged in the Veterans' Administration, and the title "Director" was changed to "Administrator." In this brief the terms are used interchangeably.

erans, authorizes the Director to make such rules and regulations as may be necessary and declares that his decision on all questions of fact shall be conclusive. Provisions of this nature have been generally held to preclude the courts from reviewing the Director's findings, and we submit that upon similar principles the courts may not assume the functions of the Director by making findings when he has failed to do so.

The departmental interpretation of the statute here under discussion has always been that no veteran is entitled to the benefits of the Act until the Director has so determined. Thus the Comptroller General has ruled that the pension of a veteran is subject to deductions for the cost of his maintenance in St. Elizabeths Hospital until the veteran has been transferred to the rolls of the Veterans' Bureau and the Bureau has assumed payment of the expenses incident to his hospitalization. And the Director of the Bureau has provided by regulation that no veteran will be transferred to the Bureau rolls until the Bureau has had an opportunity of passing upon his eligibility and need for hospitalization. Although Congress has several times amended the statutes in question, no remedial legislation has been addressed to these rulings.

The Act itself draws no distinction between persons of unsound mind and those suffering from other ailments. If an insane person is entitled to hospitalization without a finding to that effect by

the Director, so are all other veterans. But we submit that the intention of Congress that the Director should be the sole and final judge as to who is entitled to hospitalization is clearly disclosed.

While it may be that either the Superintendent of the hospital or the Director of the Bureau should have taken steps to protect the petitioner's interests, their failure to do so, we submit, does not justify the courts in determining facts upon which the Director alone was authorized to pass.

II

If the decision below is erroneous, nevertheless the petitioner may recover only such part of his pension as was charged with his board after July 2, 1926, the effective date of the amendment to the World War Veterans' Act of 1924. The 1926 Act is not in terms retroactive, and the affirmative intention of Congress that it should operate only prospectively is evidenced by the fact that a proviso for the repayment of any deductions theretofore made was eliminated from the bill prior to its passage.

ARGUMENT

I

Section 202 (10) of the World War Veterans' Act of 1924, as amended by Section 9 of the Act of July 2, 1926 (*infra*, p. 24), declares that all hospital facilities under the control and jurisdiction of the Veterans' Bureau shall be available for, among

others, veterans of the Spanish-American War who are suffering from neuropsychiatric ailments, and contains the following proviso:

> *And provided further,* That the pension of a veteran entitled to hospitalization under this subdivision shall not be subject to deduction, while such veteran is hospitalized in any Government hospital, for board, maintenance, or any other purpose incident to hospitalization: * * *

The court below found that the petitioner is a veteran of the Spanish-American War and that he was suffering from a neuropsychiatric ailment during the time he was confined in Saint Elizabeths Hospital. The petitioner contends that on the basis of these facts he was "entitled to hospitalization" within the meaning of the proviso quoted above, and that, consequently, the statute precluded the deduction from his pension of the cost of his maintenance while in the hospital.

It may be conceded at the outset that if a court may determine whether a person is entitled to hospitalization under the statute when the Director of the Veterans' Bureau has not passed upon the facts of the case, the petitioner has stated and proved a good cause of action, and the court below erred in rendering judgment in favor of the United States. It may also be admitted that the decision below works an apparent hardship upon the petitioner in that it denies him recovery by reason of an omission for which he cannot be held at fault. In spite,

however, of the very apparent equities in favor of the petitioner, we are constrained to the belief that the decision below is correct as a matter of law, and that the statute furnishes no basis for an exception in favor of the petitioner on the ground that he was of unsound mind and therefore unable to apply for its benefits.

The petitioner's argument is that he was "entitled to hospitalization" within the meaning of the proviso quoted above because the provision in Section 202 (10) that hospital facilities "shall be available" for honorably discharged veterans of the Spanish-American War who are suffering from neuropsychiatric ailments is mandatory, and the right to hospitalization is not dependent on any finding by the Director of the Veterans' Bureau as held by the court below. (Br. 6–7.) This argument appears to rest on a misconception of the Government's position and of the decision below. It is not necessary to consider whether the Director of the Veterans" Bureau, having determined that an applicant was a veteran afflicted with one of the specified ailments, might in his discretion refuse hospitalization. As to this question, the suggested distinction between veterans suffering from one of the named diseases and those whom the Director is authorized to hospitalize "so far as he shall find that existing Government facilities permit", without regard to the nature of their disabilities, seems plausible. Our contention is simply that the stat-

ute confers upon the Director *alone* authority to decide as a matter of fact whether a person claiming benefits under the Act is, first, a veteran and, second, in need of hospitalization, and that in the absence of a finding by the Director as to these facts no one is "entitled to hospitalization" within the meaning of the proviso.

During the World War and after its termination several Acts were passed for the relief of disabled veterans, and in 1921 the Veterans' Bureau was created as an independent bureau of the Government for the purpose of administering those Acts. Act of August 9, 1921, c. 57, 42 Stat. 147. By the World War Veterans' Act of 1924, which codified, revised and reenacted the laws relating to veterans' relief, certain benefits conferred upon veterans of the World War were likewise extended to veterans of the Spanish-American War, the Philippine Insurrection and the Boxer Rebellion. The enforcement of Acts granting pensions to veterans of wars prior to the World War remained, however, the duty of the Commissioner of Pensions, who was an officer in the Interior Department, until 1930, when the entire program of pensions and relief for veterans of all wars was consolidated and transferred to the Veterans' Administration. Act of July 3, 1930, c. 863, 46 Stat. 1016. Thus there has grown up a definite, unified system for the administration of veterans' benefits, and there now exists a body of laws and

regulations governing veterans' affairs, the enforcement of which has been entrusted primarily to the Director of the Veterans' Bureau, now the Administrator of Veterans' Affairs.

In *United States* v. *Jefferson Electric Manufacturing Co.*, decided February 12, 1934, No. 171, October Term, 1933, this Court said:

> As a general rule where the legislation dealing with a particular subject consists of a system of related general provisions indicative of a settled policy, new enactments of a fragmentary nature on that subject are to be taken as intended to fit into the existing system and to be carried into effect conformably to it, excepting as a different purpose is plainly shown.

See *Panama R.R. Co.* v. *Johnson*, 264 U.S. 375, 384; *United States* v. *Sweet*, 245 U.S. 563, 572; *United States* v. *Barnes*, 222 U.S. 513, 520.

Applying this principle to the instant case, the proviso in Section 202 (10) must, we submit, be construed as a part of the unified system for the administration of veterans' benefits and carried into effect in a manner conformable to it.

Section 5 of the World War Veterans' Act of 1924 (*infra*, p. 23) provides that the Director of the Veterans' Bureau shall administer, execute and enforce the provisions of the Act, that he shall have full authority and power to make rules and regulations necessary or appropriate to carry the Act into effect, and that his decisions on questions of

fact affecting any claimant to the benefits of Title II of the Act shall be conclusive, except as otherwise provided. Similar discretionary power has been conferred upon the Director by other statutes having to do with veterans' affairs,[2] and it has been generally held that in the absence of a plain abuse of discretion courts are powerless to review his findings. This Court has so held in *Silberschein* v. *United States*, 266 U.S. 221, in relation to the War Risk Insurance Act; in *United States* v. *Williams*, 278 U.S. 255, in relation to the Adjusted Compensation Act; and in *Meadows* v. *United States*, 281 U.S. 271, in respect of the reinstatement of a war-risk insurance policy. Decisions of the lower Federal courts are to the same effect. *Kalasanckas* v. *Hines*, 38 F. (2d) 389 (App.D.C.), certiorari denied, 282 U.S. 837; *United States ex rel. Bowling* v. *Hines*, 50 F. (2d) 330 (App.D.C.); *Hines* v. *Starnes*, 26 F. (2d) 997 (App.D.C.); *Hines* v. *Welch*, 23 F. (2d) 979 (App.D.C.); *Armstrong* v. *United States*, 16 F. (2d) 387 (C.C.A. 8th); *Forbes* v. *Welch*, 286 Fed. 765 (App.D.C.).

The proviso here in question exempts from deductions for costs incident to hospitalization the pensions of veterans "entitled to hospitalization under this subdivision." The subdvision is a part

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[2] See Section 13 of the War Risk Insurance Act as amended by the Act of October 6, 1917, c. 105, 40 Stat. 398, 399; Section 2 of the Act of August 9, 1921, c. 57, 42 Stat. 147, 148; Section 310 of the Adjusted Compensation Act as amended by the Act of July 3, 1926, c. 751, 44 Stat. 826, 828.

of Title II and, as has been observed, Section 5 declares that the Director shall administer the provisions of the Act and that his decisions on questions of fact "affecting any claimant to the benefits of Title II" shall be conclusive.[3] We submit, therefore, that it was plainly the intention of Congress that the Director, and he alone, should have power to determine the facts establishing the right to hospitalization under Section 202 (10). It is not inconceivable that had the Director caused the petioner to be examined in 1926, when the proviso was enacted, he would have determined that he was not then afflicted with a neuropsychiatric ailment. Such a finding would have been conclusive. See *Hines* v. *Starnes, supra.*

It is to be observed that the petitioner was committed to Saint Elizabeths Hospital in 1911 by the Secretary of the Interior under the Act of April 14, 1906 (*infra*, p. 22), as a person adjuged insane by a jury in the Supreme Court of the Dis-

[3] A provision very similar to that involved here appeared in a bill (H.R. 8132) introduced in 1926 to effect certain changes and increases in the pensions payable to veterans of the Spanish-American War. See H.Rep. No. 338, 69th Cong., 1st Sess.; Cong. Record, 69th Cong., 1st Sess., p. 6909. It was, however, eliminated by the Senate (Cong. Record, 69th Cong., 1st Sess., p. 7534) and did not appear in the bill as finally enacted. Act of May 1, 1926, c. 209, 44 Stat. 382. Thus, instead of being enacted as part of a statute the enforcement of which was entrusted to the Commissioner of Pensions (44 Stat. 383), it was made a part of the general veterans' relief legislation under the jurisdiction of the Veterans' Bureau.

trict of Columbia. The fact that he was a veteran of the Spanish-American War had nothing to do with either his commitment or his detention in the hospital, and at no time was he "hospitalized" as a patient of the Veterans' Bureau.

At the time of the enactment of the World War Veterans' Act of 1924, which authorized the hospitalization of veterans of the Spanish-American War, the Philippine Insurrection and the Boxer Rebellion, but which contained no provision in respect of deductions from pensions, a number of these veterans were patients in hospitals which, like Saint Elizabeths, were not under the jurisdiction of the Veterans' Bureau. The Act of February 2, 1909 (*infra*, p. 22), provided that the pension due any pensioner who was an inmate of Saint Elizabeths' Hospital should be paid to the superintendent or disbursing agent of the hospital and should be applied, in part, to the patient's board and maintenance.[4] That Act was in effect when the petitioner's pension was first allowed and remained in effect, except as modified by the 1926 amendment to the World War Veterans' Act, during the whole time the petitioner was confined in the hospital. It was under the supposed authority

[4] The Secretary of the Interior was authorized to provide by regulations for the distribution of the pension, and under regulations promulgated May 1, 1909, part was reserved for the pensioner's use, part paid to his dependents, and the remainder applied to his board and maintenance.

of that Act that the deductions involved here were made.

Under the Act of June 5, 1924, c. 264, 43 Stat. 390, 429, and subsequent Acts appropriating funds for Saint Elizabeths Hospital, all Government departments were required to reimburse the hospital for the care of patients for whom such departments were responsible. Following the passage of that Act and the World War Veterans' Act of 1924, the question arose whether the pensions of veterans confined in Saint Elizabeths Hospital as patients of the Veterans' Bureau remained subject to deductions for board and maintenance under the Act of 1909, or whether the expenses incident to their hospitalization should be paid in full by the Bureau. In an opinion rendered to the Secretary of the Interior in 1924 the Comptroller General held that the Act of February 2, 1909, had not been repealed but was still applicable to veterans confined in Saint Elizabeths, notwithstanding the fact that they were there as patients of the Veterans' Bureau, and that consequently the Bureau should reimburse the hospital only to the extent that the pension was insufficient to meet the cost of maintenance. 4 Comp. Gen. 445.

Following the enactment of the Act of July 2, 1926, amending Section 202 (10) of the 1924 Act, the Secretary of the Interior requested the Comptroller General to give an opinion as to the pro-

cedure to be followed in respect of veterans who had been confined in the hospital by Government agencies other than the Veterans' Bureau. The Comptroller General thereupon rendered an opinion in which, considering the precise question involved in this case, he held that a veteran was not "entitled to hospitalization" under the Act until the Director of the Veterans' Bureau had so found, and that, accordingly, his pension remained subject to charges under the Act of 1909 until he was taken over by the Bureau as its patient. 6 Comp. Gen. 126.[5] Since that time numerous amendments have been made to the World War Veterans' Act of 1924 for the purpose of clarifying some of its terms and enlarging the scope of vet-

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[5] Language similar to that employed in the proviso here under discussion appears in the Act of June 11, 1930, c. 462, 46 Stat. 556, which provides:

"That retired enlisted men of the Navy and Marine Corps and transferred members of the Fleet Naval Reserve and Fleet Marine Corps Reserve, transferred thereto after sixteen or more years' service, shall be considered to be veterans within the meaning of the laws relating to hospitalization under the Veterans' Bureau, and shall be entitled to medical treatment or hospitalization at all Government hospitals without deduction from their retired pay or retainer pay of the sum of 75 cents per day for hospital rations while in a Government hospital."

This Act has been held to mean that where beneficiaries thereof are admitted to Naval hospitals on their own application and without reference to the Veterans' Bureau their retired pay is subject to deductions for rations. 10 Comp. Gen. 94.

erans' relief.[6] No remedial legislation, however, has been addressed to the ruling that until a veteran has become a beneficiary of the Veterans' Bureau his pension remains subject to deduction for hospital expenses.

In order that such veterans as were already in hospitals might be transferred to the rolls of the Veterans' Bureau and the cost of their maintenance might be assumed by the Bureau and paid out of funds appropriated for that purpose, it was necessary that some procedure be formulated for identifying them and determining their eligibility. Accordingly, in 1926 the Bureau promulgated regulations (Reg. 155, Sec. 9121, *infra*, p. 25) which, after reciting the terms of the proviso in respect of deductions from pensions, provided that no veteran already hospitalized under the jurisdiction of another Government department would be transferred to the jurisdiction of the Bureau except upon proper application "to be submitted in accordance with existing instructions" and approved in the first instance by the medical director.[7] This

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[6] Acts of May 29, 1928, c. 875, 45 Stat. 964, 967; July 3, 1930, c. 849, 46 Stat. 991, 1000; May 21, 1932, c. 201, 47 Stat. 164; June 24, 1932, c. 276, 47 Stat. 334.

[7] Although this appears to have been the first formal regulation on the subject, the Solicitor of the Bureau had previously rendered an opinion to the same effect. See *Digests of Legal Opinions Relating to Veterans' Bureau* (1926), Vol. 2, Par. 1168. Prior to the Act of July 2, 1926, as has been observed, the transfer of a hospitalized veteran to the rolls of the Bureau was a matter affecting only the Bureau itself and the hospital in question.

regulation was subsequently reissued in identical language on August 25, 1928, and was amplified in Regulations 6056 and 6059, effective June 16, 1931 (*infra*, pp. 26–27). The instructions referred to related to the procedure to be followed in determining the applicant's status as a veteran and the need of hospital treatment. See General Order No. 292–C, Veterans' Bureau Regulations and Procedure, 1928, Part 1, p. 938.

It thus appears that both the General Accounting Office and the Veterans' Bureau have construed the Act in question as making determination of the facts by the Director of the Bureau a condition precedent to the right of hospitalization. This interpretation of the Act by those directly concerned with its administration is, we submit, entitled to great weight and, as this Court has frequently held, should not be overturned except for cogent reasons. *Norwegian Nitrogen Products Co.* v. *United States*, 288 U.S. 294, 315; *Fawcus Machine Co.* v. *United States*, 282 U.S. 375.

It is suggested in the brief in support of the petition for certiorari (pp. 7–8) that to deny the petitioner the benefits of the statute because he made no application therefor is unreasonable and unjust, since he was of unsound mind. The Act itself, however, draws no distinction between a veteran suffering from a neuropsychiatric ailment and one afflicted with tuberculosis, paralysis agitans, en-

cephalitis lethargica, amoebic dysentery or the loss of the sight of both eyes. Veterans suffering from these various diseases are all grouped together, and if one is "entitled to hospitalization" without a finding by the Director of the Veterans' Bureau to that effect, there is no basis in the statute for saying that others are not likewise entitled to the benefits of the Act regardless of any action on the part of the Director. We submit, however, that the Act cannot be thus construed.

It may be that the Superintendent of Saint Elizabeths Hospital should have applied to the Veterans' Bureau in the petitioner's behalf, or that the Director of the Bureau (assuming that he was, or should have been, aware of the petitioner's existence) should have taken the initiative in determining whether the petitioner was entitled to the benefits of the Act. But we find it difficult to perceive how the existence of such a duty on the part of the Superintendent or the Director could avail the petitioner anything in this action. The petitioner's contention is that the Superintendent was without authority of law to make the deductions from his pension. If, however, our interpretation of Section 202 (10) is correct, the authority of the Superintendent to make such deductions continued until such time as the Director might find that the petitioner was entitled to hospitalization under that section. Since the Director never made such a finding, the ultimate question is whether a

court may substitute itself in his place and find the facts in the petitioner's favor. It is well settled that courts "cannot enforce rights which are dependent for their existence upon a prior performance by an executive officer of certain duties he has failed to perform." *United States* v. *McLean,* 95 U.S. 750, 753. See also *Dunlap* v. *United States,* 173 U.S. 65; *Smith* v. *United States,* 56 F. (2d) 636 (S.D.Iowa); *Anderson* v. *United States,* 5 F.Supp. 269 (E.D.Ky.). We submit, therefore, that the court below was right in holding that it was without authority to decide whether the petitioner was entitled to hospitalization or to entertain a case which depends upon the determination of that question.

II

Even should this Court be of the opinion that the proviso in Section 202 (10) as amended is to be construed and applied in accordance with the petitioner's contention, we submit that the petitioner is entitled to recover only such deductions as were made from his pension on account of board subsequent to July 2, 1926. There is nothing to indicate that the proviso was intended to operate retroactively. On the other hand, the bill as passed by the House contained a retroactive provision which was eliminated by the Senate. That provision read as follows (Cong. Record, 69th Cong., 1st Sess., pp. 9553, 9565):

> *Provided,* That where any such deductions have heretofore been made, the director of the United States Veterans' Bureau is hereby authorized and directed, out of any current administrative appropriations, to reimburse such veterans in an amount equal to such deduction.

It seems clear, therefore, that Congress intended that the operation of the proviso should be prospective only.

CONCLUSION

We submit that the decision below is correct and should be affirmed.

Respectfully submitted.

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APRIL 1934.

APPENDIX

STATUTES

The Act of April 14, 1906, c. 1624, 34 Stat. 113, provides in part:

> * * * whenever a person is indicted or is charged by an information for an offense, and before trial or after a verdict of guilty, prima facie evidence is submitted to the court that the accused is then insane, the court may cause a jury to be impaneled * * * to inquire into the insanity of the accused * * *. If the jury shall find the accused to be then insane, * * * the court may certify the fact to the Secretary of the Interior, who may order such person to be confined in the hospital for the insane, and said person and his estate shall be charged with the expense of his support in the said hospital. * * *

The Act of February 2, 1909, c. 58, 35 Stat. 592 (U.S.C., Title 24, Sec. 165), provides in part:

> * * * During the time that any pensioner shall be an inmate of the Government Hospital for the Insane, all money due or becoming due upon his or her pension shall be paid by the pension agent to the superintendent or disbursing agent of the hospital, upon a certificate by such superintendent that the pensioner is an inmate of the hospital and is living, and such pension money shall be by said superintendent or

> disbursing agent disbursed and used, under regulations to be prescribed by the Secretary of the Interior, for the benefit of the pensioner, * * * and to pay his or her board and maintenance in the hospital, * * *.

Section 5 of the World War Veterans' Act, 1924, c. 320, 43 Stat. 607, 608 (U.S.C., Title 38, Sec. 426) provides as follows:

> SEC. 5. The director, subject to the general direction of the President, shall administer, execute, and enforce the provisions of this Act, and for that purpose shall have full power and authority to make rules and regulations, not inconsistent with the provisions of this Act, which are necessary or appropriate to carry out its purposes, and shall decide all questions arising under this Act and all decisions of questions of fact affecting any claimant to the benefits of Title II, III, or IV of this Act, shall be conclusive except as otherwise provided herein. All officers and employees of the bureau shall perform such duties as may be assigned them by the director. All official acts performed by such officers or employees specially designated therefor by the director shall have the same force and effect as though performed by the director in person. Wherever under any provision or provisions of the Act regulations are directed or authorized to be made, such regulations, unless the context otherwise requires, shall or may be made by the director. The director shall adopt reasonable and proper rules to govern the procedure of the divisions and to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnish-

ing the same in order to establish the right to benefits of compensation, insurance, vocational training or maintenance and support allowance provided for in this Act, the forms of application of those claiming to be entitled to such benefits, the methods of making investigations and medical examinations, and the manner and form of adjudications and awards.

Section 202 (10) of the World War Veterans' Act, *supra*, as amended by Section 9 of the Act of July 2, 1926, c. 723, 44 Stat. 790, 794, 796 (U.S.C. App., Title 38, Sec. 484), provides:

> SEC. 202. (10). That all hospital facilities under the control and jurisdiction of the bureau shall be available for every honorably discharged veteran of the Spanish-American War, the Philippine insurrection, the Boxer rebellion, or the World War suffering from neuropsychiatric or tubercular ailments and diseases, paralysis agitans, encephalitis lethargica, or amoebic dysentery, or the loss of sight of both eyes, regardless whether such ailments or diseases are due to military service or otherwise, including traveling expenses as granted to those receiving compensation and hospitalization under this Act. The director is further authorized, so far as he shall find that existing Government facilities permit, to furnish hospitalization and necessary traveling expenses incident to hospitalization to veterans of any war, military occupation, or military expedition, * * * not dishonorably discharged, without regard to the nature or origin of their disabilities: * * * *Provided*, That preference to admission to any Government hospital for hospitalization under the provisions of this subdivision shall

be given to those veterans who are financially unable to pay for hospitalization and their necessary traveling expenses: * * * *And provided further,* That the pension of a veteran entitled to hospitalization under this subdivision shall not be subject to deduction, while such veteran is hospitalized in any Government hospital, for board, maintenance, or any other purpose incident to hospitalization: *Provided further,* That the Act of May 4, 1898, entitled "An Act making appropriations for the naval service for the fiscal year ending June 30, 1899, and for other purposes," the Act of February 28, 1861, as amended by the Act of February 2, 1909, relative to the Government hospital for the insane in the District of Columbia, or any other Act, insofar as they are inconsistent with the provisions of this section be, and they are, hereby modified accordingly.

REGULATIONS

Section 9121 of Veterans' Bureau Regulation No. 155, promulgated September 15, 1926 (U.S. Veterans' Bureau Regulations and Procedure, 1928, Part 1, p. 187), provided:

SEC. 9121. The pension of a veteran entitled to hospitalization under section 202 (10) of the World War veterans' act, as amended, shall not be subject to deduction for board, maintenance, or any other purpose incident to hospitalization while such veteran is hospitalized in any Government hospital. When a pensioner entitled to hospitalization under section 202 (10) of the World War veterans' act, as amended, is already hospitalized by authority of and under the jurisdiction of a department other

than the United States Veterans' Bureau, such patient will not be transferred to the jurisdiction of the United States Veterans' Bureau except on proper application to be submitted in accordance with existing instructions, such application to be forwarded to central office for recommendation by the medical director to the director for approval. (September 30, 1926.)

This section was reissued on November 15, 1926, as a part of Regulation No. 160 (p. 189) and again on August 25, 1928, as Section 9122 of Regulation No. 196 (p. 220).

The practice of the Bureau with respect to pensioners already hospitalized by authority of another Federal agency was later set forth in more detail in paragraphs 6056 and 6059 of the Regulations, effective June 16, 1931. These paragraphs read as follows:

6056. *Disposition of Already Hospitalized Veterans.*—If retired army or navy (including marine corps) personnel, or other persons specified in paragraph 6048 who are potentially entitled to hospitalization under section 202 (10) World War veterans' Act, 1924, as amended, have been admitted to an army or navy hospital upon authorization other than that of the Veterans' Administration, the expense of such hospitalization will not be assumed until authorization is issued for the placing of the names of such persons on the rolls of Veterans' Administration beneficiaries in such hospitals, or for the transfers of such persons to United States veterans' hospitals. The fact that another federal agency has already hospitalized such persons will not automatically entitle them to be taken over by the Veterans'

Administration. They will be required to apply, or, if they are incompetent, their legally appointed guardians, near relatives, or the hospital heads will apply for them, to be hospitalized under section 202 (10) World War veterans' Act, 1924, as amended. Their eligibility therefor having been determined, their names will be placed on the list of those awaiting available beds, in the order of dates of application; and, unless an emergency is satisfactorily shown, such persons will not be granted priority in the furnishing of available beds over other applicants whose names precede theirs on the said lists. (June 16, 1931.)

6059. *Disposition of Pensioners Hospitalized by Federal Agencies Other Than the Veterans' Administration.*—When a pensioner entitled to hospitalization under section 202 (10) World War veterans' Act, 1924, as amended, is already hospitalized by authority of any federal agency other than the Veterans' Administration, the issuance of authorization for the placing of such pensioner's name on the rolls of Veterans' Administration patients at the institution where he is already hospitalized, or for his transfer therefrom to a United States veterans' hospital, will be governed by the conditions specified in paragraph 6056. (June 16, 1931.)"

U. S. GOVERNMENT PRINTING OFFICE 1934

SUPREME COURT OF THE UNITED STATES.

No. 734.—October Term, 1933.

Lewis Reynolds, Petitioner,
vs.
The United States.
} On Writ of Certiorari to the Court of Claims.

[May 28, 1934.]

Mr. Justice Sutherland delivered the opinion of the Court.

This suit was brought in the Court of Claims by petitioner, an honorably discharged veteran of the Spanish-American War, to recover judgment against the United States for money deducted from his pension on account of board furnished him while he was an inmate of St. Elizabeths Hospital. He was committed to the hospital as an insane person on June 19, 1911, and remained there until April 25, 1930, when he was discharged in the custody of his brother. Thereafter, petitioner regained his sanity and was of sound mind when this suit was prosecuted. During the entire period of his confinement he suffered from a neuropsychiatric ailment. Preceding the time of his discharge from the hospital there had been placed to his credit on the books of the institution, under the certificate of the Bureau of Pensions, $4,036, representing funds paid to the institution by the Bureau of Pensions on his behalf. Upon his discharge the hospital deducted from these pension funds a sum which had been advanced to him for clothing and cash, and applied the remaining $3,259.17 on account of board furnished during the period of his confinement. Petitioner, at the time, protested against the application thus made and against the refusal of the hospital to pay over to him the amount so withheld.

Shortly after his discharge from the hospital application was made on his behalf to the Director of the Veterans' Bureau for an order authorizing and directing his hospitalization at St. Elizabeths Hospital from the effective date of the World War Veterans' Act of June 7, 1924, to the date of his discharge, April 25, 1930. The director held that since no application had been made by petitioner or by anyone acting in his behalf until after his discharge, the question was moot, and the director was without authority of law to issue a retroactive order authorizing hospitalization in such a case. Following this ruling, however, the bureau issued a certificate recognizing petitioner as a veteran entitled to

hospitalization under § 202 (10) of the World War Veterans' Act of 1924, as amended.

Petitioner, by three successive enlistments, served in the army of the United States from November 30, 1897, until January 25, 1907, at which time he was honorably discharged by reason of the expiration of his term of service.

The Court of Claims denied petitioner's right to recover and dismissed his petition. — Ct. Cls. —.

Section 202 (10) of the World War Veterans' Act, as amended (U. S. C., App., Title 38, § 484), directs that all hospital facilities under the control and jurisdiction of the Veterans' Bureau shall be available "for every honorably discharged veteran of the Spanish-American War, ... suffering from neuropsychiatric . . . . ailments," with the following proviso:

"That the pension of a veteran entitled to hospitalization under this subdivision shall not be subject to deduction, while such veteran is hospitalized in any Government hospital, for board, maintenance, or any other purpose incident to hospitalization."

This proviso appeared for the first time in the Act of July 2, 1926. c. 723, § 9, 44 Stat. 794.

The Veterans' Bureau had and exercised the right to make use of St. Elizabeths Hospital for insane veterans; and this, we think, satisfied the requirement contemplated by the statute that the hospital facilities (not the hospital) shall be under the control and jurisdiction of that bureau.

The court below, in ruling against petitioner, proceeded upon the theory that a court is without jurisdiction to entertain a proceeding for the determination of the question whether a veteran is entitled to hospital facilities, to order his hospitalization, or to certify his right thereto—those being matters, the court said, within the sole authority of the director of the bureau. Granting the correctness of this view, we are of opinion that it does not apply in this case. The undisputed and indisputable facts bring the veteran within the requirements of the statute. Undoubtedly, therefore, as matter of law, he was entitled to the hospital facilities of St. Elizabeths, and if timely application had been made to the director of the bureau, a refusal upon his part to order the hospitalization would have been wholly without evidentiary support, clearly arbitrary and capricious, and would not, upon well settled principles, have concluded the courts. *Silbersehein* v. *United States,* 266 U. S. 221, 225, and authorities cited; *United*

States v. *Williams*, 278 U. S. 255, 257. So much, indeed, seems to be within the concession made in the brief and argument for the government:

"It may be conceded at the outset that if a court may determine whether a person is entitled to hospitalization under the statute when the Director of the Veterans' Bureau has not passed upon the facts of the case, the petitioner has stated and proved a good cause of action, and the court below erred in rendering judgment in favor of the United States."

Here no application was made to the director for the sufficient reason that petitioner was mentally, and therefore legally, incapable of making it; and apparently he had no guardian to act for him. However, his condition being certified to the Secretary of the Interior, in virtue of a statutory provision, that official, acting under the statute, ordered petitioner confined at St. Elizabeths Hospital; and to that hospital he was accordingly committed and there held until his discharge in 1930. It would, perhaps, not be going too far to say that the hospital authorities were charged with the duty of making application to the director if under these circumstances any further steps were required. We, therefore, do not have the case of an insane person seeking at the hands of a court an order awarding him the facilities of the hospital, but that of one who having been accorded such facilities was in and entitled to be in the possession and use of them as of right.

In this state of affairs, about which there is and can be no dispute, the only question presented to the court below was whether, under the proviso already quoted, the pension of petitioner was subject to deduction for board. The purpose of that proviso was to exempt pensions of the class named from hospital charges like the one here involved, and thereby cure what Congress deemed a defect in the prior law. The language is clear and explicit, namely, "that the pension of a veteran entitled to hospitalization under this subdivision shall not be subject to deduction, while such veteran is hospitalized . . . , for board . . ." Given their natural meaning, these words plainly are applicable to the situation with which the court below was called upon to deal. The result is that the hospital was without authority to retain the funds here in question, and the court below should have given judgment for petitioner.

The final contention of the government is that, in any event, petitioner is not entitled to recover so much of the funds withheld by the hospital as equal the charges for board furnished prior to

July 2, 1926, when the proviso first came into effect, since to allow him to do so, it is said, would be to give the proviso a retroactive operation contrary to the intention of Congress. The evidence of such intention is said to lie in the fact that the bill as it passed the House contained an additional provision to the effect that when any such deductions "have heretofore been made" the Veterans' Bureau shall reimburse the veterans concerned in amounts equal thereto; and that this provision was rejected by the Senate and finally eliminated from the bill; thus evincing the intention of Congress that the proviso should operate prospectively only.

But the rejected provision spoke only of deductions made before the enactment of the proviso, and the deduction in the present case was not so made. The court below found that at the time of petitioner's discharge from the hospital the sum of the pension payments which had been credited to him on the books of that institution was $4,036; and that *upon his discharge* the hospital deducted the amount here in dispute on account of board from May 7, 1922, to February 6, 1930. The deduction, therefore, was not one which had "heretofore been made," but was one made long after the passage of the proviso and did not come within the terms of the rejected provision. Certainly Congress has power to relieve a pension paid by the federal government from liability to answer for a pre-existing unpaid debt owing to a governmental institution, as well as one thereafter incurred; and it seems entirely clear that the proviso in question was so intended. The liability for board arose from continuous charges, beginning before the proviso was passed and ending at the time of petitioner's discharge, when the pension funds credited to petitioner and then in the hands of the hospital were taken over, or "deducted", in settlement of the then existing account for board—a proceeding plainly forbidden by the proviso.

But in no aspect of the matter would the allowance of that portion of the amount sued for which was applicable to board furnished prior to July 2, 1926, cause the proviso to operate retroactively. A statute is not rendered retroactive merely because the facts or requisites upon which its subsequent action depends, or some of them, are drawn from a time antecedent to the enactment. *Cox* v. *Hart*, 260 U. S. 427, 435, and cases cited.

Judgment reversed with directions to enter judgment for petitioner.

Mr. Justice STONE and Mr. Justice CARDOZO dissent.